

Message Text

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ACTION SCSE-00

INFO OCT-01 ARA-10 ISO-00 DHA-02 L-03 H-02 SCA-01
/019 W

-----130551Z 044638 /22

R 122305Z APR 77
FM AMEMBASSY MEXICO
TO AMCONSUL NUEVO LAREDO
INFO SECSTATE WASHDC 1479
ZEN ALL USCONS MEXICO BY POUCH

UNCLAS MEXICO 05097

E.O. 11652: N/A
TAGS:CASC, MX
SUBJECT: MEXICAN PENAL PROCEDURES

1. THE FOLLOWING IS IN RESPONSE TO A QUERY FROM AMCONSUL
NUEVO LAREDO BUT IS BEING INFO'D ALL CONSULATES AS THE
INFORMATION MAY BE OF GENERAL INTEREST.

2. AFTER INITIAL ARREST AND DURING THE PERIOD OF
INVESTIGATION BY FEDERAL OR STATE POLICE, IT HAS BEEN THE
GENERAL PRACTICE THAT THE ARRESTEE IS NOT PERMITTED TO
RECEIVE ADVICE OF COUNSEL PRIOR TO SIGNING PREPARATORY
DECLARATIONS. CONTRARY TO INFO GIVEN NUEVO LAREDO, THE
EMBASSY HAS NOT BEEN ABLE TO ASCERTAIN THAT THIS PRACTICE
IS SUPPORTED BY A SUPREME COURT DECISION. TWO AUTHORITIES
ON MEXICAN PENAL LAW HAVE INFORMED US THAT IT IS NOT.
WHEN DISCUSSING WITH CONGEN THE QUESTION OF CONSULAR
ACCESS PRIOR TO CONSIGNMENT, LIC. FERNANDO BAEZA, EXECUTIVE
OFFICER OF PROCURADURIA GENERAL, SAID THAT ATTORNEY
GENERAL AGREED TO PROVIDE SUCH ACCESS BUT THAT IT WAS AN
EXCEPTION TO EXISTING PRACTICE IN MEXICO WHERE ARRESTEE
IS NOT EVEN ALLOWED ACCESS TO HIS ATTORNEY DURING INTERRO-
GATION PERIOD BECAUSE OF THE LIKELIHOOD THAT HE WILL
WARN ACCOMPLICES. ON BASIS OF INFORMATION AVAILABLE TO
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EMBASSY, HOWEVER, LEGAL ADVICE IS SOMETIMES PERMITTED
PRIOR TO SIGNING ANY DECLARATION BUT THE POSSIBILITY OF
ACCESS BY AN ATTORNEY DEPENDS ON HIS INFLUENCE OR
PERSISTENCE.

3. THE EMBASSY HAS BEEN PRESSING FOR CONSULAR ACCESS PRIOR
TO THE CONSIGNMENT STAGE SO AS TO MINIMIZE
ABUSES WHICH FREQUENTLY OCCUR DURING THIS PERIOD AND

TO ENABLE THE ARRESTEE TO RETAIN A LAWYER AS SOON AS POSSIBLE. IN THE MEXICO CITY CONSULAR DISTRICT, IT IS COMMON TO HAVE ATTORNEYS "AVAILABLE" AT THE PROCURADURIA, BUT THESE ATTORNEYS ARE GENERALLY OF THE LOWEST ABILITY AND HONESTY AND FREQUENTLY ATTEMPT TO OBTAIN EXCESSIVE FEES FROM THE PRISONER AND, AT TIMES, DIRECTLY FROM FAMILIES OR RELATIVES IN THE U.S. WHEN THE OCCASION PERMITS THE CONSULAR OFFICER SHOULD GIVE THE ATTORNEY LIST. HE MAY ADVISE THE ARRESTEE THAT HE IS NOT REQUIRED TO SIGN ANY DECLARATION UNTIL HE TALKS TO COUNSEL BUT SHOULD THE CONOFF DO SO, HE SHOULD ALSO ADVISE THAT THE EMBASSY IS UNCERTAIN AS TO THE NET EFFECT OF SUCH ACTION. FAILURE TO SIGN A DECLARATION HAS BEEN VIEWED BY SOME AS IMPLYING GUILT -- THE ASSUMPTION BEING THAT ONLY THE EXPERIENCED CRIMINAL KNOWS NOT TO SIGN. FURTHER, THERE ARE INSTANCES WHERE THE DESIRE BY THE AUTHORITIES TO OBTAIN SIGNED STATEMENT HAS LED TO THE USE OF VERY ABUSIVE ACTS TO FORCE THE SIGNING.

4. THE EMBASSY HAS CONSISTENTLY TAKEN THE POSITION THAT "IMMEDIATE ACCESS" AS IT APPEARS IN THE US/MEXICAN CONSULAR CONVENTION MEANS ACCESS AFTER ARREST, NOT JUST AFTER CONSIGNMENT. AS NOTED ABOVE, HOWEVER, GOM POSITION HAS CONSISTENTLY BEEN TO AFFIRM ITS RIGHT, SEEMINGLY BASED ON PRACTICE, TO HOLD THE ARRESTEE FROM ACCESS TO COUNSEL ALTHOUGH LIMITED PROGRESS IS BEING MADE IN ACCESS BY CONOFFS. THIS SUBJECT IS PERIPHERALLY DEALT WITH IN MEXICO 4103 ON NOTIFICATION AND ACCESS.

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5. RE QUERY ON PERIOD OF TRIAL, STATE AUTHORITIES HAVE NO BASIS TO ARGUE THAT THEY HAVE 18 MONTHS IN WHICH TO JUDGE AN ARRESTEE WHEN THE CASE INVOLVES A STATE OFFENSE. THE MEXICAN CONSTITUTION (PARAGRAPH 20 OF ARTICLE VIII) IS CONTROLLING AND IT REQUIRES THAT ONE ACCUSED OF AN OFFENSE IN WHICH THE MAXIMUM PENALTY EXCEEDS TWO YEARS MUST BE TRIED WITHIN ONE YEAR. NO DISTINCTION IS MADE BETWEEN FEDERAL AND STATE OFFENSES. THOMPSON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PENAL SYSTEM
Control Number: n/a
Copy: SINGLE
Sent Date: 12-Apr-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977MEXICO05097
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770127-0676
Format: TEL
From: MEXICO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770466/aaaacfjn.tel
Line Count: 105
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 6245bda6-c288-dd11-92da-001cc4696bcc
Office: ACTION SCSE
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 25-Oct-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2833539
Secure: OPEN
Status: NATIVE
Subject: MEXICAN PENAL PROCEDURES
TAGS: CASC, PORS, MX
To: SCS NUEVO LAREDO
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/6245bda6-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009